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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,362

12/28/2006

Yukihide Iwamoto

4456-0106PUS1

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EXAMINER

POPA, ILEANA

ART UNIT

PAPER NUMBER

1633

NOTIFICATION DATE

DELIVERY MODE

09/03/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/566,362	Applicant(s) IWAMOTO ET AL.	
	Examiner ILEANA POPA	Art Unit 1633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: ____. |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :07/13/2009; 03/17/2009; 04/10/2008; 01/30/2006.

DETAILED ACTION

1. Claims 1-6 are under examination.

Information Disclosure Statement

2. The IDS forms of 07/13/2009, 03/17/2009, 04/10/2008, and 01/30/2006 have been considered. It is noted that the foreign document identified as BB on the IDS of 07/13/2009 has been lined through because Applicant did not provide an English translation of the document, nor did Applicant provide an English abstract.

Priority

3. Acknowledgment is made of Applicant's claim for foreign priority based on an application filed in JAPAN on 1/28/1005. It is noted, however, that Applicant has not filed a certified copy of the 2003-283703 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 112, 2nd paragraph

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 3 recites the limitation "joint surface" in claim 1. There is insufficient antecedent basis for this limitation in the claim because claim 1 does not recite a joint.

Claim Rejections - 35 USC § 102

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Britt et al. (Arch. Otolaryngol. Head Neck Surg., 1998, 124: 671-677).

Britt et al. teach an *ex vivo* method of preparing an autologous tissue-engineered cartilage by seeding autologous chondrocytes onto the surface of a polymeric scaffold by placing the polymers into a mold and allowing them to dry (i.e., the scaffold is shaped into a desired form), seeding and adhering the cells onto the scaffold, and culturing the cell-scaffold composite in a medium comprising 10% fetal calf serum (i.e., in the presence of growth factors) to induce the formation of neocartilage (i.e., under conditions which induce differentiation of cells into a cartilage tissue) (claims 1, 5 and 6) (Abstract; p. 671, column 2; p. 672, column 2; p. 673, column 1). Britt et al. teach their scaffold as having micropores (claim 4) (p. 672, column 1, last paragraph). Since Britt et al. teach all claim limitations, the claimed invention is anticipated by the above-cited art.

8. Claims 2-6 are rejected under 35 U.S.C. 102(b) as being anticipated by van Susante et al. (Biomaterials, 2001, 22: 2359-2369).

van Susante et al. teach a method of preparing an artificial joint by seeding and adhering chondrocytes onto the surface of a porous collagen matrix shaped into a

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desired form, culturing the chondrocyte-matrix composite in a medium comprising 10% fetal calf serum (i.e., in the presence of growth factors), wherein the chondrocytes secrete extracellular matrix components and form a cartilage tissue (claims 2, 3, 5 and 6) (Abstract; p. 2361, columns 1 and 2; paragraph bridging p. 2363 and p. 2364, Fig. 2, and column 2, p. 2366, columns 1 and 2). van Susante et al. also teach that their collagen matrix has micropores (claim 4) (p. 2360, column 2). Since van Susante et al. teach all claim limitations, the claimed invention is anticipated by the above-cited art.

9. No claim is allowed. No claim is free of prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILEANA POPA whose telephone number is (571)272-5546. The examiner can normally be reached on 9:00 am-5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ileana Popa/
Primary Examiner, Art Unit 1633